



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/813,054

03/31/2004

Yoshitaka Fukushima

F05-169600M/KQK

4870

21254

7590

09/26/2006

MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

EXAMINER

LHYMN, EUGENE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,054

Applicant(s)

FUKUSHIMA ET AL.

Examiner

Eugene Lhymn

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 9-20 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 9-20 are directed towards the embodiment according to Fig. 2 & 3A, which is a mutually exclusive embodiment from that of Fig. 1, which was originally presented. Specifically, the saddle-type container as shown in Fig. 3A having two display portions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claim language directed towards a "tiered bottom" is not supported in the specification.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danna (US 5221021) in view of Magyar (US 2003/0230583 A1). With respect to claims 1-4, to the degree that the claim is understood, Danna discloses the following:

- a display portion of a working portion of a waste fuel hole at a lowermost outer surface of a tank (Fig. 4, item 58 & 32, & Fig. 2 – indentations in bottom surface corresponding to item 58), but fails to disclose the bottom being tiered.
- the display portion being located below a chamber module (34).
- the display portion being a bead portion (Fig. 4).
- the bead portion being formed by projecting a bead portion to an inner side of the tank (Fig. 4).

However, Danna fails to disclose the bottom being tiered. Nonetheless, Magyar teaches a similar fuel container wherein the bottom is tiered, thereby providing an alternate shape. Moreover, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of the bottom of Danna to be tiered as taught by Magyar so as to provide an alternate shape.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danna in view of Magyar as applied to claim 1, and further in view of Benjey et al. (US 6298540 B1). As to claims 5, 6, to the degree that the claims are understood, Danna as modified above discloses the claimed invention except for the bead portion being a plurality of non-continuous bead portions. However, Benjey et al. teaches a fuel tank having a plurality of non-continuous bead portions, thereby providing an alternate arrangement of bead portions. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bead portion of Danna to have multiple noncontinuous portions as taught by Benjey et al. so as to provide an alternate bead arrangement.

With respect to claims 7, 8, to the degree that the claims are understood, Danna as modified above discloses the claimed invention except for the bead portion including a plurality of bead portions. However, Benjey et al. teaches a fuel tank having a plurality of non-continuous bead portions, thereby providing an alternate arrangement of bead portions. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bead portion of Danna to have multiple noncontinuous portions as taught by Benjey et al. so as to provide an alternate bead arrangement.

Response to Arguments

6. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone

Art Unit: 3727

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen Castellano
Primary Examiner